



November 30, 2023

Sent via email to devki.virk@maryland.gov

Devki K. Virk
Commissioner of Labor & Industry
Maryland Department of Labor
1100 North Eutaw Street
Baltimore, MD 21201

Re: Enforcement of Living Wage Law

Dear Commissioner Virk,

The Public Justice Center and Amalgamated Transit Union Local 689 are writing to call your attention to certain issues with the enforcement of Maryland’s living wage law (“MLWL”), Md. Code Ann., State Fin. & Proc. § 18-101 *et seq.* We appreciate that you have a great many priorities before you, and we are grateful for all you are doing to ensure that Maryland’s workers are fully protected by Maryland law. We write this letter in the spirit of collaboration in the hope that you can help correct an error from the previous administration that has created an opening for wage theft to fester.

As background for our interest in this matter, ATU Local 689 represents many workers who are protected by the MLWL. And, last year, on behalf of 12 drivers and a dispatcher, the PJC settled a wage-theft lawsuit against Transdev for work performed under a paratransit contract with the MTA—a living wage contract. The plaintiffs worked for one of Transdev’s subcontracts on the MTA contract. They alleged that they were paid just a few dollars an hour despite working 60 hours a week or more. The case settled for about \$412,000 in unpaid wages and damages for the 13 workers following a decision on summary judgment holding, among other things, that Transdev jointly employed the workers and was liable for both unpaid wages and liquidated damages. *McCoy v. Transdev Servs., Inc.*, No. CV DKC 19-2137, 2022 WL 951996 (D. Md. Mar. 30, 2022). We are concerned that similar wage theft may be persisting under other MLWL contracts because many state contractors are not submitting to the Maryland Department of Labor (“MDOL”) the certified payroll of their subcontractors, as the law requires.

The MLWL requires that employers with state service contracts valued at \$100,000 or more pay the employees who work under those contracts a state-determined “living wage,” so long as those employees work full time for 13 consecutive weeks or more. Md. Code Ann., State Fin. & Proc. §§ 18-101 to 18-

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*Admitted In Illinois only

103.¹ To prevent covered employers from using subcontracts to evade the law's requirements, the MLWL defines covered employers to include subcontractors. *Id.* § 18-101(c)(2). The MLWL imposes on contractors the burden of ensuring that workers employed directly by subcontractors are paid in accordance with the law. Contractors must submit to the state detailed, biweekly payroll records—both for their employees and the employees of any subcontractors—and sign a statement certifying that the payroll records are correct and that workers were paid in compliance with the MLWL. Md. Code Regs. § 21.11.10.05.

However, through a Public Information Act (“PIA”) request, the PJC learned that Transdev did not submit any certified payroll to MDOL concerning the subcontractor at issue in the above-referenced suit. More recently, through another PIA request, we learned that despite the plain language of the statute and COMAR, many more state contractors that are bound by the MLWL are not submitting the certified payroll of their subcontractors. As a result, MDOL lacks the information necessary to determine whether these workers—paid with state funds under living wage contracts—are compensated in compliance with the MLWL.

It is our understanding that a key reason for this failure is the previous administration's rescission of a memorandum from then-Governor Martin O'Malley that MDOL interpreted as giving it more enforcement authority to ensure that living wage contractors also submit their subcontractors' certified payroll. That memorandum is attached here. It includes, for example, that to address contractors' failure to submit required payroll records, agencies are directed to (1) “state that the contractor's submission of specified Living Wage documentation is a contract requirement” in every solicitation that may lead to a MLWL-covered contract, and (2) include a provision in every MLWL-eligible contract “that a contractor's failure to submit required Living Wage documentation may result in the agency withholding payments and retainage.”

Ideally, we believe that MDOL should promulgate a regulation to clarify its enforcement authority regarding the submission of subcontractors' certified payroll under the MLWL; that way, it would be significantly more challenging for a future administration that is less worker-friendly to simply stop enforcing the law. In the meantime, we wanted to call your attention to the attached memorandum in the hope that the current administration might consider reissuing it, or a version of it, and again ensure that subcontractors bound by the MLWL are in fact complying with it.

¹ Enacted in 2007, the MLWL is the country's first statewide living-wage law. *See* State Procurement Contracts – Living Wage, 2007 Maryland General Assembly House Bill 430, <https://mgaleg.maryland.gov/2007rs/bills/hb/hb0430e.pdf> (enrolled bill); Steven Greenhouse, *Maryland Is First State to Require Living Wage*, N.Y. Times (May 9, 2007), <https://www.nytimes.com/2007/05/09/us/09wage.html>. The MLWL is designed to reduce poverty in Maryland by ensuring that workers under certain state contracts—whether employed by a contractor or a subcontractor—are paid at or above a prescribed “living” wage. *See id.* (quoting the MLWL's primary sponsor as saying the purpose of the law is to “fight poverty without using public assistance programs”).

If there is any further information we can provide on this issue, please let us know. We remain encouraged by and thankful for your leadership. We look forward to working with you and MDOL to improve working conditions for all Marylanders.

Sincerely,

A handwritten signature in black ink that reads "David Rodwin". The signature is written in a cursive style with a large, sweeping initial "D".

David Rodwin
Diana Jarek
Public Justice Center

A handwritten signature in blue ink that reads "Raymond Jackson". The signature is written in a cursive style with a large, sweeping initial "R".

Raymond Jackson
Amalgamated Transit Union Local 689